

Office of Personnel Management

§ 930.205

(3) OPM receives a recommendation for the employee's appointment from the agency concerned; and

(4) OPM determines the employee meets the qualification requirements and has passed the current examination for an administrative law judge position.

(d) *Appointment of an employee from a non-administrative law judge position.* Except as provided in paragraphs (a) and (c) of this section, an agency may not appoint an employee who is serving in a position other than an administrative law judge position to an administrative law judge position.

(e) *Promotion.* (1) Except as otherwise stated in this paragraph, 5 CFR part 335 applies in the promotion of administrative law judges.

(2) To reclassify an administrative law judge position at a higher level, the agency must submit a request to OPM. When OPM approves the higher level classification, OPM will direct the promotion of the administrative law judge occupying the position prior to the reclassification.

(f) *Reassignment.* Prior to OPM's approval, the agency must provide a bona fide management reason for the reassignment.

(g) *Reinstatement.* An agency may reinstate a former administrative law judge who served under 5 U.S.C. 3105, passed an OPM administrative law judge competitive examination, and meets the professional license requirement in paragraph (b) of this section.

(h) *Transfer.* An agency may not transfer an individual from one administrative law judge position to another administrative law judge position within 1 year after the individual's last appointment, unless the gaining and losing agencies agree to the transfer.

(i) *Conformity.* Actions under this section must be consistent with § 930.201(f).

[72 FR 12954, Mar. 20, 2007, as amended at 73 FR 41235, July 18, 2008]

EFFECTIVE DATE NOTE: At 78 FR 71989, Dec. 2, 2013, § 930.204 was amended by revising paragraph (b), effective Jan. 2, 2014. For the convenience of the user, the revised text is set forth as follows:

§ 930.204 Appointments and conditions of employment.

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(b) *Licensure.* At the time of application and any new appointment, the individual must possess a professional license to practice law and be authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution. Judicial status is acceptable in lieu of "active" status in States that prohibit sitting judges from maintaining "active" status to practice law. Being in "good standing" is also acceptable in lieu of "active" status in States where the licensing authority considers "good standing" as having a current license to practice law.

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§ 930.205 Administrative law judge pay system.

(a) OPM assigns each administrative law judge position to one of the three levels of basic pay, AL-3, AL-2 or AL-1 of the administrative law judge pay system established under 5 U.S.C. 5372 in accordance with this section. Pay level AL-3 has six rates of basic pay, A, B, C, D, E, and F.

(1) The rate of basic pay for AL-3, rate A, may not be less than 65 percent of the rate of basic pay for level IV of the Executive Schedule. The rate of basic pay for AL-1 may not exceed the rate for level IV of the Executive Schedule.

(2) The President determines the appropriate adjustment for each level in the administrative law judge pay system, subject to paragraph (a)(1) of this section. Such adjustments take effect on the 1st day of the first pay period beginning on or after the first day of the month in which adjustments in the General Schedule rates of basic pay under 5 U.S.C. 5303 take effect.

(3) An agency must use the following procedures to convert an administrative law judge's annual rate of basic pay to an hourly, daily, weekly, or bi-weekly rate:

(i) To derive an hourly rate, divide the annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as the next higher cent.

(ii) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the administrative law judge's basic daily tour of duty.

(iii) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, respectively.

(b) Pay level AL-3 is the basic pay level for administrative law judge positions filled through a competitive examination.

(c) Subject to OPM approval, agencies may establish administrative law judge positions in pay levels AL-2 and AL-1. Administrative law judge positions are placed at these levels when they involve significant administrative and managerial responsibilities.

(d) Administrative law judges must serve at least 1 year in each AL pay level, or in an equivalent or higher level in positions in the Federal service, before advancing to the next higher level and may advance only one level at a time.

(e) Except as provided in paragraph (f) of this section, upon appointment to an administrative law judge position and placement in level AL-3, an administrative law judge is paid at the minimum rate A of AL-3. He or she is automatically advanced successively to rates B, C, and D of that level upon completion of 52 weeks of service in the next lower rate, and to rates E and F of that level upon completion of 104 weeks of service in the next lower rate. Time in a non-pay status is generally creditable service when computing the 52- or 104-week period as long as it does not exceed 2 weeks per year for each 52 weeks of service. However, absence due to unformed service or compensable injury is fully creditable upon reemployment as provided in part 353 of this chapter.

(f) Upon appointment to a position at AL-3, an administrative law judge may be paid at the minimum rate A, unless the administrative law judge is eligible for the higher rate B, C, D, E, or F because of prior service or superior qualifications, as provided in paragraphs (f)(1) and (f)(2) of this section.

(1) An agency may offer an administrative law judge applicant with prior Federal service a higher than minimum rate up to the lowest rate of

basic pay that equals or exceeds the applicant's highest previous Federal rate of basic pay, not to exceed the maximum rate F.

(2) With prior OPM approval, an agency may pay the rate of pay that is next above the applicant's existing pay or earnings up to the maximum rate F. The agency may offer a higher than minimum rate to:

(i) An administrative law judge applicant with superior qualifications (as defined in § 930.202) who is within reach for appointment from an administrative law judge certificate of eligibles; or

(ii) A former administrative law judge with superior qualifications who is eligible for reinstatement.

(g) With prior OPM approval, an agency, on a one-time basis, may advance an administrative law judge in an AL-3 position with added administrative and managerial duties and responsibilities one rate above the administrative law judge's current AL-3 pay rate, up to the maximum rate F.

(h) Upon appointment to an administrative law judge position placed at AL-2 or AL-1, an administrative law judge is paid at the established rate for the level.

(i) An employing agency may reduce the level or rate of basic pay of an administrative law judge under § 930.211.

(j) With prior OPM approval, an employing agency may reduce the level of basic pay of an administrative law judge if the administrative law judge submits to the employing agency a written request for a voluntary reduction due to personal reasons.

§ 930.206 Performance rating and awards.

(a) An agency may not rate the job performance of an administrative law judge.

(b) An agency may not grant any monetary or honorary award or incentive under 5 U.S.C. 4502, 4503, or 4504, or under any other authority, to an administrative law judge.